



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2011-0443]

RIN 1625-AA01

Anchorage Regulations; Newport, RI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the shape and expanding the dimensions of anchorage "D" at Newport, Rhode Island, to better accommodate increasing cruise ship visits to Newport and to improve navigation safety.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0443 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0443 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket

Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Edward G. LeBlanc, Chief, Waterways Management Division, Coast Guard Sector Southeastern New England, at 401-435-2351, or Edward.G.LeBlanc@uscg.mil or Lieutenant Junior Grade Isaac M. Slavitt, Waterways Management Division, Coast Guard First District, at 617-223-8385. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 27, 2011, we published a notice of proposed rulemaking (NPRM) entitled "Anchorage Regulations; Newport, RI" in the Federal Register (76 FR 59596). We received no comments on the proposed rule.

Basis and Purpose

The Secretary of Homeland Security has delegated to the Coast Guard the authority to establish and regulate anchorage grounds in accordance with 33 U.S.C. 471, 1221

through 1236, 2030, 2035, and 2071; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1. The purpose of this rule is to change the shape and expand the dimensions of anchorage "D" at Newport, Rhode Island, to better accommodate increasing cruise ship visits to Newport, and to improve navigation safety.

Background

This rule changes the shape and expands the size of anchorage "D" west of Goat Island, Newport, RI, to safely accommodate up to three cruise ships simultaneously. Currently, it is a trapezoid-shaped anchorage of approximately 0.11 square nautical miles that can safely accommodate only two cruise ships simultaneously. Over the past several years, cruise ship visits to Newport, RI, have been more frequent. On occasion, there is a need to anchor up to three cruise ships simultaneously in anchorage "D". For the convenience and safety of passengers and to improve navigation safety, an increase in the size of the anchorage is necessary. The Coast Guard believes the depth of water, water-sheet area, and density of vessel traffic in the vicinity of Newport west of Goat Island are sufficient to accommodate this change.

Consequently, the Coast Guard is changing the shape of anchorage "D" from a trapezoid to a square, and

expanding its size from approximately 0.11 to 0.24 square nautical miles. The rule also includes specific anchorage points when there are one, two, or three vessels anchored in anchorage "D".

This rule will not change the current provision in 33 CFR 110.145(a)(4)(i) and (ii) that gives preference to the U.S. Navy from May 1 to October 1 each year should it require the anchorage, and the rule allows temporary floats or buoys for marking of anchors or moorings.

Discussion of Comments and Changes

We received no comments on and made no changes to the proposed rule. No public meeting was requested, and none was held.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office

of Management and Budget has not reviewed it under that Order.

The economic impact of this rule will not be significant because it only modifies the shape of a currently-existing anchorage at Newport, RI, and although it also increases the size of the anchorage, the water-sheet area covered by the proposed anchorage is still less than 0.25 square nautical miles.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels that have a need to anchor in anchorage "D" at Newport, RI.

This rule will not have a significant economic impact

on a substantial number of small entities for the following reasons: this rule only modifies the shape of a currently-existing anchorage at Newport, RI, and although it also increases the size of the anchorage, the water-sheet area covered by the proposed anchorage is still less than 0.25 square nautical miles; it does not impose new requirements that would affect vessels' schedules or their ability to transit in the Newport, RI, area or Narragansett Bay, nor does it require the purchase of any new equipment or the hiring of any additional crew.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though

this rule does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why

using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(f) of the Instruction because it involves the modification of a currently-existing anchorage area. An environmental analysis checklist and a categorical exclusion

determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110--Anchorage Regulations

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 110.145, revise paragraphs (a)(4) introductory text, and (d)(2), and add paragraphs (a)(4)(iii) and (a)(4)(iv) to read as follows:

§ 110.145 Narragansett Bay, R.I.

(a) ***

(4) Anchorage D. West of Goat Island, an area bounded by the following coordinates:

Northeast Corner: 41°29.484'N, 071°19.975'W

Northwest Corner: 41°29.484'N, 071°20.578'W

Southwest Corner: 41°29.005'N, 071°20.578'W

Southeast Corner: 41°29.005'N, 071°19.975'W

(iii) Should any part of an anchored vessel extend into the recommended vessel route in the East Passage of Narragansett Bay, a securite call notifying

mariners of the vessel's exact position and status shall be made at least hourly on VHF channels 13 and 16.

(iv) As much as practicable vessels anchoring will do so in the following order:

(A) Primary anchoring point: 41°29.25'N,
071°20.15'W

(B) Secondary anchoring point: 41°29.38'N,
071°20.45'W.

(C) Tertiary anchoring point: 41°29.15'N,
071°20.50'W.

Note to paragraph (a): "Anchoring point" is the intended position of the anchor at rest on the bottom of the anchorage. All coordinates referenced use datum: NAD 83.

* * * * *

(d) ***

(2) Anchors must not be placed outside the anchorage areas, nor shall any vessel be so anchored that any portion

of the hull or rigging shall at any time extend outside the boundaries of the anchorage area. However, Anchorage D (paragraph (a)(4) of this section) is exempt from this requirement.

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Dated: January 20, 2012

Daniel A. Neptun
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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